



medication.

It is not entirely clear what order Plaintiff wishes this court to reconsider by his August 13, 2007 motion. It is possible Plaintiff believes that this court should have reviewed his June 1, 2007 declaration when it was filed and, at that time, granted him additional time in which to appeal. It is also possible that Plaintiff desires this court to reconsider the Ninth Circuit's order dismissing Plaintiff's appeal as untimely. While this court has no authority to reconsider a ruling by the Ninth Circuit, the basis of Plaintiff's motion is a request that this court somehow make it possible for Plaintiff to file a late appeal because it was not Plaintiff's fault he did not timely appeal. Thus, the court will address this request.

Pursuant to 28 U.S.C. § 2107(a), parties must file notices of appeal within 30 days of the entry of the judgment being appealed. Bowles v. Russell, - U.S. -, 127 S.Ct. 2360, 2363 (2007). "District courts have limited authority to grant an extension of the 30-day time period." Id. Rule 4(a)(5) of the Federal Rules of Appellate Procedure provides the court's authority to extend the time in which a party may file a notice of appeal. Rule 4(a)(5) provides:

- (A) The district court may extend the time to file a notice of appeal if:
  - (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
  - (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.
- (B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.
- (C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 10 days after the date when the order granting the motion is entered, whichever is later.

Fed.R.App.Pro. 4(a)(5). Rule 4(a)(5) does not provide a basis for the court to allow a late appeal in this case. Plaintiff has not shown that he filed his appeal, or motion for additional time within which to appeal, within the statutory 30-day filing period. Rather, Plaintiff first filed his notice of appeal and a possible request for additional time in which to appeal over six months after the Clerk of the Court entered judgment. Accordingly, the court has no power to provide Plaintiff

1 with additional time in which to appeal pursuant to Rule 4(a)(5).

2       There is one other rule that allows for late appeals. If certain conditions are met, the  
3 court has the statutory authority to grant motions to reopen the time for filing an appeal for 14  
4 days. 28 U.S.C. § 2107(c). Rule 4(a)(6) of the Federal Rules of Appellate Procedure provides  
5 the court's authority to reopen and extend the time for filing a notice of appeal after the lapse of  
6 the usual 30 days. Rule 4(a)(6) provides:

7       The district court may reopen the time to file an appeal for a period of 14 days  
8 after the date when its order to reopen is entered, but only if all the following  
conditions are satisfied:

9       (A) the court finds that the moving party did not receive notice under Federal Rule  
of Civil Procedure 77(d) of the entry of the judgment or order sought to be  
10 appealed within 21 days after entry;

11       (B) the motion is filed within 180 days after the judgment or order is entered or  
within 7 days after the moving party receives notice under Federal Rule of Civil  
Procedure 77(d) of the entry, whichever is earlier; and

12       (C) the court finds that no party would be prejudiced.

13 Fed.R.App.Pro. 4(a)(6). Rule 4(a)(6) provides no assistance to Plaintiff. Plaintiff's claim is  
14 that he was medically unable to timely file a notice of appeal. Plaintiff does not claim that he did  
15 not receive notice of the court's entry of judgment. The purpose of Rule 4(a)(6) is only to soften  
16 the harsh penalty of losing one's right to an appeal because of the court's failure to notify a party  
17 of a judgment, not to allow parties' to file late appeals. Arai v. American Bryce Ranches, Inc.,  
18 316 F.3d 1066, 1070 (9<sup>th</sup> Cir. 2003). Thus, the court has no power to reopen the time in which to  
19 appeal pursuant to Rule 4(a)(6).

20       Plaintiff also appears to request the court allow him to file a late appeal do to his mental  
21 illness; An extraordinary circumstance outside of his control. While the court is not  
22 unsympathetic to Plaintiff's argument, this court has no ability to allow a late appeal based on  
23 this equitable argument. Filing an appeal within the prescribed time is mandatory and  
24 jurisdictional. Bowles, 127 S.Ct. at 2363; Griggs v. Provident Consumer Discount Co., 459 U.S.  
25 56, 61 (1982) (per curiam). Because the timely filing of a notice of appeal in a civil case is a  
26 jurisdictional requirement, there is no equitable exception to this jurisdictional requirement. Id.

1 at 2366; Magtanong v. Gonzales, 494 F.3d 1190, 1191-92 (9<sup>th</sup> Cir. 2007). Thus, this court has  
2 no ability to allow Plaintiff to file an appeal at this late date.

3 **ORDER**

4 Accordingly, Plaintiff's motion for reconsideration and motion to file a late appeal are  
5 DENIED.

6  
7 IT IS SO ORDERED.

8 **Dated: December 20, 2007**

/s/ Anthony W. Ishii  
UNITED STATES DISTRICT JUDGE